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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

PELMON C. DRUMMOND,

Defendant and Appellant.

D044100

(Super. Ct. No. SCD175813)

APPEAL from a judgment of the Superior Court of San Diego County, William D. Mudd, Judge. Affirmed.

Pelmon C. Drummond appeals her conviction of unlawfully transporting a controlled substance enhanced by a prior conviction of the same crime. (Health & Saf. Code, §§ 11352, subd. (a), 11370.2, subd. (a).)<sup>1</sup> Drummond was charged with transporting a controlled substance and selling a controlled substance, both violations of

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<sup>1</sup> All statutory references are to the Health and Safety Code.

section 11352, subdivision (a). She concedes that at the preliminary hearing evidence was presented supporting both charges.

In a written plea agreement, Drummond entered a guilty plea to selling a controlled substance and admitted the prior drug conviction in exchange for dismissal of the second charge and a six-year sentence. At the oral hearing on her request to enter the guilty plea, the court advised her of her constitutional rights and the consequences of a guilty plea. The court obtained a waiver, and Drummond entered a guilty plea to transporting a controlled substance. She also admitted a prior drug conviction. The court denied a motion to withdraw the guilty plea made on the ground that Drummond suffers from a vision malady, making her unable to read the written plea agreement, and sentenced her to prison for six years: the three-year lower term for transporting a controlled substance enhanced three years for the prior drug conviction. Drummond contends the guilty plea is invalid because the written agreement says she is pleading guilty to selling a controlled substance and during the oral hearing, she entered a guilty plea to transporting a controlled substance.

## FACTS

On July 3, 2003, Drummond carried cocaine base from her room at Motel 6 to the street in front of a nearby liquor store and exchanged it with a San Diego police detective for \$40.

## DISCUSSION

Drummond argues the conviction is invalid because she did not knowingly enter a guilty plea to transporting a controlled substance since she said in her written agreement

that she was guilty of selling a controlled substance. Relying on *People v. McClellan* (1993) 6 Cal.4th 367, 377, the People argue that Drummond waived this argument by not making it in the trial court. In *McClellan*, the trial court did not advise McClellan that registering, as a sex offender was a consequence of his guilty plea to assault with intent to commit rape. The Supreme Court found he waived his right to challenge the registration requirement by not objecting to it at the sentencing hearing. Drummond argues *McClellan* is distinguishable because she, Drummond, did not know of the error in time to object in the trial court.

In her motion to withdraw the guilty plea, Drummond claimed she could not see well enough to understand the written change of plea agreement. Assuming her claim is true and we disregard the written change of plea agreement, the record still contains her oral guilty plea to transporting a controlled substance. Nothing in the record indicates that the oral guilty plea was not knowing and intelligent.

*Boykin v. Alabama* (1969) 395 U.S. 238, 242-243, requires a showing in the record the defendant has knowingly and voluntarily waived his rights to remain silent, to a jury trial, and to confront and cross-examine witnesses. As the California Supreme Court said in *In re Tahl* (1969) 1 Cal.3d 122, 132:

"This does not require the recitation of a formula by rote or the spelling out of every detail by the trial court. It does mean that the record must contain *on its face* direct evidence that the accused was aware, or made aware, of his right to confrontation, to a jury trial, and against self-incrimination, as well as the nature of the charge and the consequences of his plea."

Here, Drummond does not contend the trial court failed to properly advise her of her constitutional rights and that she waived those rights. Nor does she question her response, "Guilty" after the court asked her, "How do you, then, plead to the charge that on or about the date of July 3rd of 2003 you did unlawfully transport cocaine base, guilty or not guilty." Having entered a guilty plea to selling cocaine base in the written plea agreement, she contends the record does not reflect she knowingly pled guilty to either crime. To the contrary, the record reflects that she pled guilty to both crimes but pursuant to the plea agreement the court dismissed one.

In any case, even if the oral guilty plea was invalid, we can reverse only if Drummond shows prejudice. (See *People v. McClellan*, *supra*, 6 Cal.4th at p. 378.) Here, the abstract of judgment reflects that Drummond was convicted of violating section 11352, subdivision (a), transporting a controlled substance. While section 11352, subdivision (a) also outlaws selling a controlled substance, the punishment for the two offenses is identical. Selling and transporting a controlled substance are each violation of section 11352, subdivision (a), and carry the same legal consequence. Indeed, the abstract of judgment reflects violation of section 11352, subdivision (a). Drummond has shown no prejudice resulting from identification of her offense in the abstract of judgment as transporting a controlled substance, the crime to which she pled guilty.

#### DISPOSITION

The judgment is affirmed.

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BENKE, Acting P. J.

WE CONCUR:

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HUFFMAN, J.

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McDONALD, J.